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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,931	01/26/2004	Peter Robert Foley	CM-2491D	9645

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EXAMINER	
DELCOTTO, GREGORY R	
ART UNIT	**PAPER NUMBER**
1751	

DATE MAILED: 07/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/764,931	FOLEY ET AL.	
	Examiner	Art Unit	
	Gregory R. Del Cotto	1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *09 May 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *2 and 6* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *2 and 6* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☒ Certified copies of the priority documents have been received in Application No. 09/909,403.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. Claims 2 and 6 are pending. Claims 1, 3-5, and 7-12 have been canceled. Applicant's arguments and amendments filed 5/9/06 have been entered.

Claim 1 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 1/5/05.

Objections/Rejections Withdrawn

The following objections/rejections as set forth in the Office action mailed 2/21/06 have been withdrawn:

The objection to claim 6 under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim, has been withdrawn.

The objection to claims 11 and 12 because of minor informalities has been withdrawn.

Priority

Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d). The certified copy has been filed in parent Application No. 09/909403, filed on 7/19/2001.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 2 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kacher (US 5,891,836), Hees et al (US 6,090,764), or JP 2000-44990, all in view of Uchiyama et al (US 2002/0010106).

Kacher teaches light-duty liquid or gel dishwashing detergent compositions which are especially useful for the manual washing of heavily soiled dishware. Such compositions are in the form of oil-in-water or bicontinuous microemulsitions. They contain an alkyl ether sulfate, a nonionic surfactant, a suds booster, an aqueous liquid carrier, a liquid hydrocarbon, and a glycol ether microemulsion forming solvent. See Abstract. Additionally, these compositions may also comprise perfumes. See column 12, lines 1-21. In addition to the essentially present glycol ether microemulsion-forming solvents, a variety of other water-miscible liquids such a lower alkanols, diols, ethers,

amines, and the like may be used as solvents as part of the aqueous liquid carrier. Soiled dishes can be contacted with an effective amount, typically from about 0.5 ml to about 20 ml, of the detergent composition of the present invention. The soiled dishes are immersed in the sink containing the detergent composition and water, where they are cleaned by contacting the soiled surface of the dish with a cloth, sponge, or similar article. The cloth, sponge, or similar article may be immersed in the detergent composition and water mixture prior to being contacted with the dish surface, and is typically contacted with the dish surface for a period of time ranging from about 1 to about 10 seconds, although the actual time will vary with each application and user. The contacting of the cloth, sponge, or similar article to the dish surface is preferably accompanied by a concurrent scrubbing of the dish surface. See column 13, lines 4-60. Note that, the Examiner asserts that it would have been obvious to one of ordinary skill in the art to pretreat dishes with the cleaning composition as taught by Kacher by soaking in the detergent composition and water and then further wash them by hand or in an automatic dishwasher when the tableware has particularly tough grease or soil stains as recited by instant claim 6.

Hees et al teach a process for increasing the solubility and surfactant content of a concentrated aqueous manual dishwashing detergent composition by adding to the composition a glycerol sulfate. See Abstract. The compositions are water-based and the total surfactant content of these compositions is preferably above 25% by weight. See column 3, lines 1-15. Solvents may optionally be added to the compositions and include ethanol, isopropanol, etc. Solubilizers may also be added to the compositions

and include alkanolamines, etc. See column 4, lines 15-40. Note that, the Examiner asserts that it would have been obvious to one of ordinary skill in the art to pretreat dishes with the cleaning composition as taught by Hees et al by soaking in the detergent composition and water and then further wash them by hand or in an automatic dishwasher when the tableware has particularly tough grease or soil stains as recited by instant claim 6.

'990 teaches a liquid detergent composition for a hard surface whose pH is 6 to 13 and containing 0.01 to 20% by weight surfactant, from 0.01 to 20% by weight of solvent, and 3 to 20% by weight of an amine compound. See Abstract. Suitable solvents include monopropylene glycol monobutyl ether, monopropylene glycol monopropl ether, etc. See para. 25. Suitable amines include monoethanolamine, diethanolamine, triethanolamine, etc. See para. 29. The liquid detergent composition is used for cleaning hard surfaces such as those in bathrooms, kitchens, household electric appliances, tableware, etc. See para. 34. Note that, the Examiner asserts that it would have been obvious to one of ordinary skill in the art to pretreat dishes with the cleaning composition as taught by '990 et al by soaking in the detergent composition and water and then further wash them by hand or in an automatic dishwasher when the tableware has particularly tough grease or soil stains as recited by instant claim 6.

Kacher, Hees et al, or '990 do not teach the use of cyclodextrin or a method of removing solids from tableware using a composition containing an organic solvent comprising an organoamine, cyclodextrin, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

Uchiyama et al teach a stable composition for removing unwanted molecules form a surface comprising cyclodextrin. The compositions are suitable for capturing unwanted molecules from inanimate surfaces including dishes. See Abstract. When the surfaces are treated with the compositions, the functionally-available cyclodextrin complexes with the unwanted molecules, thereby effectively removing and/or reducing the presence of the unwanted molecules on the treated surfaces. See para. 15. The compositions can be either emulsions/dispersions or clear, single-phase solutions. See para. 12. Additionally, the compositions may contain a carrier such as alcohol. See para 137.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use cyclodextrin in the composition taught by Kacher, Hees et al, or '990, with a reasonable expectation of success, because Uchiyama et al teach the use of cyclodextrin in compositions for cleaning dishes effectively removes and/or reduces the presence of the unwanted molecules on the treated surfaces.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to remove soils from tableware using a composition containing an organic solvent comprising an organoamine, cyclodextrin, and the other requisite components of the composition in the specific proportions as recited by the instant claims, with a reasonable expectation of success, because the broad teachings of Kacher, Hees et al, or '990 in combination with Uchiyama et al suggest removing soils from tableware using a composition containing an organic solvent comprising an

organoamine, cyclodextrin, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 2 and 6 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 36-40 of copending Application No. 09/909233 in view of Uchiyama et al (US 2002/0010106) or claims 30-35 of 09/909288 in view of Uchiyama et al (US 2002/0010106). Note that, for purposes of double-patenting, claims 30-32 of 09/909288 which are dependent upon canceled claim 1, have been interpreted to be dependent upon claim 57.

Claims 36-40 of 09/909233 or claims 30-35 of 09/909288 encompass all the material limitations of the instant claims except for the inclusion of a cyclodextrin.

Uchiyama et al are relied upon as set forth above.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use cyclodextrin in the composition used in the method recited by claims 36-40 of 09/909233 or claims 30-35 of 09/909288, with a reasonable expectation of success, because Uchiyama et al teach the use of cyclodextrin in compositions for cleaning dishes effectively removes and/or reduces the presence of the unwanted molecules on the treated surfaces.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to remove soils from tableware using a composition containing an organic solvent comprising an organoamine, cyclodextrin, and the other requisite components of the composition in the specific proportions as recited by the instant claims, with a reasonable expectation of success, because claims 36-40 of 09/909233 or claims 30-35 of 09/909288 in combination with Uchiyama et al suggest removing soils from tableware using a composition containing an organic solvent comprising an organoamine, cyclodextrin, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

This is a provisional obviousness-type double patenting rejection.

Response to Arguments

With respect to the instant claims, Applicant states that the method of use claims herein have been amended to recite the limitations of claim 1 and claim 38 of granted parent US 6,683,036, and submits that the amended claims are in immediate condition for allowance. In response, note that, the Examiner asserts that a determination of

patentability must be made on a case-by-case basis and where a parent case has been allowed, a new search must be conducted on the claims of the child case to determine patentability of those claims. Furthermore, a determination under 35 USC 103 should rest on all the evidence and should not be influenced by any earlier conclusion. See MPEP 2144.08. Thus, even though an allowable product was allowed in the parent case, the process claims which incorporate the allowable product in the instant case have be analyzed and examined and a separate patentablility determination has been made. The Examiner maintains that the combination of references set forth above renders the claimed invention obvious under 35 USC 103.

With respect to Uchiyama et al, Applicant states that Uchiyama et al does not discuss or teach the use of an organoamine solvent in combination with a cyclodextrin malodor-control agent and that Uchiyama et al briefly discusses very low molecular weight amines as not complexing effectively with cyclodextrin in the context of being "unwanted molecules". In response, note that, Uchiyama et al is a secondary reference relied upon for its teaching of cyclodextrin. As stated previously, the Examiner maintains that one of ordinary skill in the art clearly would have been motivated to use cyclodextrin in the dishwashing cleaning compositions taught by Kacher, Hees et al, or JP 2000-44990, with a reasonable expectation of success, because Uchiyama et al teaches that the use of cyclodextrin in dishwashing compositions (See para. 2. of Uchiyama et al) effectively removes and/or reduces the presence of the unwanted molecules on the treated surfaces. Additionally, while Uchiyama et al does state that cyclodextrin does not complex effectively with some very low molecular weight organic

amines and acids when they are present at low levels on wet fabrics, the Examiner has relied upon Uchiyama et al for its teaching of cyclodextrins in dishwashing compositions and asserts that cyclodextrins present in dishwashing compositons containing amine solvents would function to remove or reduce unwanted molecule on the surface(s) of the tableware which would be different from any amine molecules present on wet fabrics.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory R. Del Cotto whose telephone number is (571) 272-1312. The examiner can normally be reached on Mon. thru Fri. from 8:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on (571) 272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Gregory R. Del Cotto
Primary Examiner
Art Unit 1751

GRD
July 22, 2006